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Attorneys for Defendant XM Satellite Radio Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD VACCARIELLO on behalf of him-	:	
self and all others similarly situated,	:	
	:	08 CIV 5336 (CLB)
Plaintiff,	:	
	:	NOTICE OF MOTION TO
- against -	:	DISMISS
	:	
XM SATELLITE RADIO INC.,	:	
	:	
Defendant.	:	
-----	x	

PLEASE TAKE NOTICE that, upon the complaint in this action, the defendant's Memorandum of Law in Support of Its Motion To Dismiss, the annexed Declaration of Anthony J. Dreyer dated July 22, 2008, the exhibits attached thereto, and all prior proceedings had in this action, the undersigned counsel for defendant XM Satellite Radio Inc. will move this Court for an Order dismissing the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Pursuant to the agreement of the parties, plaintiff's opposition shall be filed on or before August 20, 2008, defendant's reply shall be filed on or before September 2, 2008, and the motion shall be returnable on September 23, 2008 or as soon thereafter as the parties may be heard.

Dated: July 22, 2008

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

/s/ Kenneth A. Plevan

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